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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,500	10/24/2003	Peter W. Carhuff	88265-7670	1144
28765	7590	11/30/2005		
WINSTON & STRAWN LLP 1700 K STREET, N.W. WASHINGTON, DC 20006			EXAMINER MARKOFF, ALEXANDER	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 11/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/692,500

Applicant(s)

CARHUFF ET AL.

Examiner

Alexander Markoff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/17 &amp; 6/18/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 23-34 in the reply filed on 09/06/05 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).
2. Cancellation of non-elected claims 1-22 and filing new dependent claims 35-56 is noted.

### ***Information Disclosure Statement***

3. The information disclosure statement filed 3/17/04 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

The applicants have not filed copies of EP 0245641 and GB 2367105 listed on the PTO 1449. These documents were not considered.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:  

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claims 23-56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are indefinite because it is not clear what is meant by “operatively associated” and “associated”. What is required by these terms?

The claims are also indefinite because it is not clear what is meant by “substantial intervention”. The term “substantial intervention” is a relative term and the scope of the term is indefinite.

Claims 36 and 37 are indefinite because it is not clear what is meant by “substantial interruption of the delivery mechanism”. What is “substantial interruption”? What is “interruption of the mechanism”?

Claims 40 and 41 are indefinite because it is not clear what is meant by the requirement of “providing the cleansing operation with sanitizing operation”. What manipulative step/steps are required?

Claims 48 and 49 are indefinite because it is not clear what is the time for individual consumption. Consumption of what is meant? What individual is referenced?

Claims 34 and 55 are indefinite because it is not clear what is required or excluded by this claim.

Claim 56 is indefinite because it is not clear what association is required for cleaning mechanism to clean itself.

### ***Claim Rejections - 35 USC § 102 & 103***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. Claims 23, 24, 27, 29, 30, 31, 32, 34, 35, 36, 39, 40, and 48-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Lee (Us Patent No 5,855,295).

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Lee teaches a method comprising the claimed manipulative steps. See entire document, especially column 3, line 48 -

Le does not specifically states that cleaning is conducted more than one time per day. However, since Lee teaches to determine whether or not cleaning is needed every time when 50 servings is sold or every 3 hours it is reasonably believed that the cleaning is conducted at least several times per day.

On the other hand, it would have been obvious to an ordinary artisan having the teaching of Lee at the time the invention was made that the heavily used dispenser would require cleaning more than one time during a day, especially in the restaurants or stores operating 24 hours per day.

11. Claims 23, 24, 27, 29-36, 38, 39, 40, 42-56 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mirabile (US Patent No 5,762,096, which incorporates US Patent No 4,527,585).

Mirabile teaches a method comprising the claimed manipulative steps. See entire document and incorporated patent, especially column 1 and column 4, line 20 – column 7, line 41.

Mirabile does not specifically states that cleaning is conducted several times per day. However, since Mirabile teaches conducting cleaning in off-hours and any desired or needed time it is believed that that the cleaning is conducted more than ones per day in the conventional operations.

On the other hand, it would have been obvious to an ordinary artisan at the time the invention was made to conduct the cleaning at any time when required by operation

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conditions recited by Mirabile, such as for example unacceptable foaming due to freezing or contamination .

12. Claims 25, 26, 28, 37, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over any one of Lee and Mirabile.

Lee and Mirabile teach the claimed method except for specific recitation of velocity of cleaning fluid, temperature of water, and duration of cleaning.

As to the temperature of water: the cited documents teach the use of hot water. The scope of the term "hot water" comprises the water of the claimed temperature. It would have been obvious to an ordinary artisan at the time the invention was made to find an optimum temperature of the hot water by routine experimentation in order to ensure the cleaning and sanitizing of the dispensers.

As to the fluid velocity and duration of cleaning:

These parameters are result effective variables. It would have been obvious to find optimum values of the result effective variables by routine experimentation in order to enhance cleaning and ensure desired level of cleaning.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patents 6,625,993 and 6,490,872 are cited to show the state of the prior art with respect to cleaning of food dispensers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Markoff whose telephone number is 571-272-1304. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Barr can be reached on 571-272-1414. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Alexander Markoff  
Primary Examiner  
Art Unit 1746

AM

**ALEXANDER MARKOFF**  
**PRIMARY EXAMINER**